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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 VIVECA SANAI, an individual, CYRUS SANAI,  
8 an individual, FREDRIC SANAI, an individual,  
9 INGRID BURON, an individual, and DARIA  
10 SANAI, an individual,

11 Plaintiffs,

12 v.

13 SASSAN SANAI, an individual, MARY LYNN  
14 McCOLLOUGH, an individual, INTERNAL  
15 MEDICINE & CARDIOLOGY, INC., a  
16 Washington corporation,

17 Defendants.

18 CYRUS SANAI, an individual, and FREDRIC  
19 SANAI, an individual,

20 Plaintiffs,

21 v.

22 SASSAN SANAI, an individual, MARY LYNN  
23 McCULLOUGH, an individual, INTERNAL  
24 MEDICINE & CARDIOLOGY, INC., a  
25 Washington corporation, WILLIAM  
26 SULLIVAN, an individual, and MARSH  
MUNDORF PRATT SULLIVAN AND  
MCKENZIE, a partnership,

Defendants,

v.

PHILIP MAXEINER, Special Master,

Garnishee.

CASE NO. C08-0252-JCC

ORDER

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2 This matter comes before the Court on Judgment Debtor Viveca Sanai's Motion to Dismiss Writ  
3 of Garnishment (Dkt. No. 11), Judgment Creditor Internal Medicine & Cardiology, Inc. ("IMC")'s  
4 Response in opposition (Dkt. No. 17), and Sanai's Reply<sup>1</sup> (Dkt. No. 12), as well as IMC's Motion for  
5 Summary Judgment on Writ of Garnishment (Dkt. No. 18), Sanai's Response in opposition (Dkt. No.  
6 21), and IMC's Reply (Dkt. No. 22). The Court has carefully considered these papers and the balance of  
7 the record in this case, and has determined that oral argument is not necessary. The Court hereby finds  
8 and rules as follows.

9 **I. BACKGROUND**

10 On November 10, 2005, the Court entered a judgment against Viveca Sanai, Cyrus Sanai, and  
11 Fredric Sanai, awarding IMC \$61,721.00 in sanctions. (C02-2165-TSZ, Dkt. No. 741.) Having received  
12 no satisfaction of this judgment, on January 2, 2008, IMC applied for a writ of garnishment to collect the  
13 amount of the judgment, plus interest and the costs of the garnishment process. (Dkt. No. 2.) The Court  
14 issued the writ, in the total amount of \$67,741.42, to Philip Maxeiner ("Garnishee"), the Special Master  
15 appointed by the Snohomish County Superior Court to "hold funds generated from the sale of assets in  
16 the dissolution of the marriage of Viveca and Sassan Sanai, and to distribute those funds only pursuant to  
17 orders of that court." (*Id.*; Summ. J. Mot. 3 (Dkt. No. 18).) Four other writs, involving other underlying  
18 judgments against Sanai, issued from the United States District Court at the same time.<sup>2</sup> Maxeiner

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20 <sup>1</sup>Sanai also filed an Objection to the opposition brief filed by IMC, on grounds that the Court  
21 unfairly re-noted the motion to dismiss twice, giving IMC more time to file its Response. (Dkt. No. 19.)  
22 The Court also notes that Sanai filed her Reply before IMC filed any Response.

23 <sup>2</sup>The five writs of garnishment issued by the Court are:

24 C08-0251-JCC, Dkt. No. 2  
25 C08-0252-JCC, Dkt. No. 2  
C08-0253-JCC, Dkt. No. 2  
C08-0254-JCC, Dkt. No. 2  
C08-0255-JCC, Dkt. No. 2.

1 requested direction from the Snohomish County Superior Court, and was ordered by that court to  
2 transfer into the court's registry a sufficient amount to cover the writs of garnishment from the funds he  
3 held in trust for Sanai, and to answer all five of the writs. (Order Directing Action of Special Master 1–2  
4 (Dkt. No. 4 at 5–6).) The court also ordered that the funds transferred into the court's registry would  
5 not be disbursed except on receipt of a certified copy of a judgment and order, or multiple orders, issued  
6 by the United States District Court, directed at Maxeiner. (*Id.* at 2.) On January 22, 2008, Maxeiner  
7 answered the writs, indicating that he had deposited into the Snohomish County Superior Court's registry  
8 sufficient funds belonging to Viveca Sanai to satisfy the judgments against her. (Dkt. No. 4 at 3.) On  
9 February 6, 2008, IMC presented a proposed judgment and order requesting that the United States  
10 District Court order the Snohomish County Clerk to disburse \$67,741.42 to IMC. (Dkt. No. 8.)

11 On February 8, 2008, Sanai filed an Amended Declaration in Contravention of Garnishee's  
12 Answer. (Dkt. No. 10.) In it, she argued that the Court had no jurisdiction to make any orders to the  
13 Clerk of the Snohomish County Superior Court. On February 20, 2008, she filed a motion to dismiss the  
14 writ of garnishment. (Dkt. No. 11.) On March 25, 2008, this Court denied substantially similar motions to  
15 dismiss the writs of garnishment filed in C08-251-JCC (Dkt. No. 20), C08-0254-JCC (Dkt. No. 16) and  
16 C08-0255-JCC (Dkt. No. 15).<sup>3</sup> In this case, however, the Court re-noted the motion to dismiss and  
17 directed Sanai to serve the motion on IMC by first class U.S. mail. (Dkt. No. 13.) On May 30, 2008, the  
18 Court re-noted all pending dispositive motions in the five cases, for judicial efficiency, to June 13, 2008.  
19 (Dkt. No. 16.) The Court noted that no response had yet been filed by IMC to the motion to dismiss, and  
20 in light of the re-noting, set a deadline of June 9 for any response by IMC. On June 9, 2008, IMC filed its  
21 Response to the motion to dismiss. (Dkt. No. 17.) The following day, IMC filed a motion for summary  
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25 <sup>3</sup>Sanai withdrew her motion to dismiss the writ of garnishment in C08-0253-JCC, citing the  
Court's denial of the parallel motions to dismiss. (Dkt. No. 18.)

1 judgment that is substantially similar to the motions for summary judgment filed in the parallel cases.<sup>4</sup>  
2 (Dkt. No. 18.) IMC’s motion for summary judgment on the writ of garnishment seeks an order finding  
3 that no trial is necessary, and that IMC is entitled to judgment against Maxeiner in his capacity as Special  
4 Master. IMC asks the Court to direct the Snohomish County Superior Court Clerk to disburse to IMC  
5 \$67,741.42.

6 Sanai opposes summary judgment on grounds that IMC’s motion is “completely bereft of any  
7 declarations as to any facts whatsoever.” (Resp. 4 (Dkt. No. 21 at 5).) Sanai also argues that Maxeiner  
8 was “corruptly appointed” to his position of Special Master and that this Court should not “validate that  
9 corrupt conduct by issuing instruction to Maxeiner to hand over moneys he illegally and corruptly  
10 held[.]” (*Id.* at 6.) Sanai also argues that the Court “lacks jurisdiction to direct anyone to do anything in  
11 respect of the funds held by the Snohomish County Clerk.” (*Id.*)

## 12 **II. ANALYSIS**

### 13 **A. Motion to Dismiss**

#### 14 **1. Applicable Standard**

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17 <sup>4</sup>Before the briefing was concluded on the motion for summary judgment, this case and the  
18 parallel cases were transferred from Judge Thomas S. Zilly to the undersigned. (Dkt. No. 20.) In her  
19 Response to the motion for summary judgment, Sanai makes the following threat to this Court:

20 Disposition of these motions will require this Court to either endorse Judge Zilly’s  
21 advancement of indisputable corruption, or to break free from it. Whichever course this  
22 Court chooses will have important consequences not only for this Court personally, given  
23 the open-ended charge of the Third Circuit investigating committee, but also of the  
24 continued existence of the Ninth Circuit in its present form. To put it bluntly, if the judges  
of Western District of Washington other than Judge Zilly and the judges of the Ninth  
Circuit other than Judge Kozinski do not reject the wholesale embrace of judicial  
corruption endorsed by Judge Zilly and Judge Kozinski, these institutions will not survive  
in their present form.

25 (Resp. 8 (Dkt. No. 21).) The Court admonishes Sanai that threats of this nature have no place in a  
pleading filed with the Court.

1 “A writ of garnishment<sup>5</sup> is a warning by the court to a third party that the plaintiff is attempting to  
2 reach funds . . . of the defendant which may be in the hands of the third party.” PATRICK J. LAYMAN, 3  
3 WASHINGTON LAWYERS PRACTICE MANUAL § 7.75 (2008). The purpose of Washington’s garnishment  
4 statute “is to enforce the obligations of debtors.” *Watkins v. Peterson Enters.*, 973 P.2d 1037, 1042  
5 (Wash. 1999) (citing WASH. REV. CODE § 6.27.005). The district court applies the Washington  
6 garnishment statute because “the procedure on execution . . . [of a money judgment] must accord with  
7 the procedure of the state where the court is located[.]” FED. R. CIV. P. 69(a)(1).

8 Under Washington law, a writ of garnishment may be dismissed where “it appears from the  
9 answer of the garnishee that the garnishee was not indebted to the defendant when the writ of  
10 garnishment was served, and that the garnishee did not have possession or control of any personal  
11 property or effects of the defendant[.]” WASH. REV. CODE § 6.27.240; *see, e.g., Watkins v. Peterson*  
12 *Enters.*, 973 P.2d 1037, 1048 (Wash. 1999) (recognizing that writs of garnishment were effectively  
13 dismissed where the garnishee’s uncontroverted answer indicated that the garnishee held no garnishable  
14 income owing to the creditor).

## 15 2. Analysis

16 In her motion to dismiss, Sanai advances two arguments that the Court should dismiss the writs  
17 with prejudice. First, she argues that Maxeiner transferred the funds to the court’s registry pursuant to  
18 Sassan Sanai, with the consent of the other judgment creditors. As a result, Sanai argues, the party in  
19 control of the funds is not a party to the writ of garnishment, and “no order can be made with respect of  
20 it.” (Mot. to Dismiss 3 (Dkt. No. 11 at 4).) Second, Sanai argues that the garnishment action must be  
21 dismissed because the attorney of record who filed the application for a writ, John Shields, did not  
22 register for electronic service in violation of the April 1, 2004 Revised General Order concerning  
23 electronic filing. (*Id.*)

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25 <sup>5</sup>“The word ‘garnishment’ is derived from the word ‘garner,’ meaning to warn.” LAYMAN, *supra*,  
at § 7.75.

1 The Court will not dismiss the writ of garnishment on the grounds Sanai advocates. As to her first  
2 argument, the Court finds both the underlying facts and the results she claims are mandated without basis.  
3 The Special Master did not transfer the funds to the court's registry pursuant to Sassan Sanai's "bidding";  
4 rather, the Snohomish County Superior Court ordered Maxeiner to deposit the funds in the court's  
5 registry while this Court adjudicated the garnishment actions. The court explicitly did not release the  
6 funds from the writs; rather, it recognized that any order from this Court with respect to disbursement of  
7 the funds should be directed to Maxeiner.<sup>6</sup> There is no question that at the time the writs issued,  
8 Maxeiner was in control of funds belonging to Sanai, and that Sanai is indebted to IMC for the amounts  
9 stated in the writ. The Court will not dismiss the writ based on these underlying facts.

10 The Court also declines to dismiss the writ on the grounds that John Shields did not apply for  
11 electronic service until April 25, 2008. Although it is true that registration in the CM/ECF system for the  
12 purpose of electronic service of pleadings and other papers is mandatory<sup>7</sup>, both Shields and Todd  
13 Wakefield, the local attorney who associated with Shields on April 25, 2008, did register for electronic  
14 service by April 25, 2008. Further, the procedures regarding registration are not inflexible: "[a] judge of  
15 this court may deviate from these procedures in specific cases, without prior notice, if deemed  
16 appropriate for the just, speedy, and inexpensive determination of matters pending before the court."<sup>8</sup> The  
17 purpose of this action is to enforce Sanai's obligation to pay IMC. The Court deems it appropriate in this

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20 <sup>6</sup>The Snohomish County Superior Court Order directing the Special Master to deposit the funds  
21 into the court's registry stated that: "\$299,900.57 deposited into the Snohomish County Court Registry  
22 shall not be disbursed except upon receipt of a certified copy of a judgment and order, or multiple orders,  
issued by the U.S. District Court. Said order(s) would be directed to Philip Maxeiner and the clerk would  
be authorized to make distributions upon receipt of said judgment(s) and order(s)." (Dkt. No. 7 at 6.)

23 <sup>7</sup>See U.S. District Court, W. D. Wash. Electronic Filing Procedures for Civil and Criminal Cases  
24 (amended 6/1/06), available at <http://www.wawd.uscourts.gov/documents/ElectronicCaseFiling/ECFProcedures6-2006.pdf>.

25 <sup>8</sup>See *id.*

1 case to excuse the delay in Shield's registration insofar as it does not consider it just to dismiss the writ of  
2 garnishment for a temporary failure to comply with technical ECF procedures. This philosophy comports  
3 with the Court's previous order requiring Sanai to serve the motion to dismiss upon IMC by U.S. mail.

4 Finally, it does not "appear[] from the answer of the garnishee that the garnishee was not indebted  
5 to the defendant when the writ of garnishment was served, [or] that the garnishee did not have possession  
6 or control of any personal property or effects of the defendant[.]" *See* WASH. REV. CODE § 6.27.240.

7 Accordingly, the Motion to Dismiss (Dkt. No. 11) is DENIED.

## 8 **B. Summary Judgment**

### 9 **1. Applicable Standard**

10 Under Washington law, after a writ of garnishment has been issued and answered, a party who is  
11 not satisfied with the answer of the garnishee may controvert the answer by filing an affidavit:

12 stating that the affiant has good reason to believe and does believe that the answer of the  
13 garnishee is incorrect, stating in what particulars the affiant believes the same is incorrect.

14 WASH. REV. CODE § 6.27.210. Thereafter, the garnishee may respond by affidavit within twenty days. *Id.*  
15 at § 6.27.220. After twenty days, "the matter may be noted by any party for hearing before a . . .  
16 presiding judge for a determination whether an issue is presented that requires a trial." *Id.* "If a trial is not  
17 required, then the controversion may be disposed of in whatever manner is appropriate." MARJORIE DICK  
18 ROMBAUER, 28 WASHINGTON PRACTICE § 8.50 (1998). In addition, "[i]ssues on controversion may be  
19 decided on a motion for summary judgment." *Id.* (citing *Watters v. Doud*, 596 P.2d 280, 282 (Wash.  
20 1979), *abrogated on other grounds by* *Haley v. Highland*, 12 P.3d 119 (Wash. 2000)).

21 Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file,  
22 and any affidavits show that there is no genuine issue as to any material fact and that the movant is  
23 entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). "A 'material' fact is one that is relevant  
24 to an element of a claim or defense and whose existence might affect the outcome of the suit." *T.W. Elec.*  
25 *Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). The moving party bears

1 the initial burden of showing that no genuine issue of material fact exists. *Matsushita Elec. Indus. Co. v.*  
2 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). If the moving party meets this initial burden, then the  
3 party opposing the motion must set forth facts showing that there is a genuine issue for trial. *See T.W.*  
4 *Elec. Serv.*, 809 F.2d at 630. The party opposing the motion must “do more than simply show that there  
5 is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586. “In response to a  
6 summary judgment motion, . . . the plaintiff can no longer rest on . . . mere allegations, but must set forth  
7 by affidavit or other evidence specific facts, . . . which for the purposes of the summary judgment motion  
8 will be taken to be true.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); FED. R. CIV. P.  
9 56(e). If the nonmoving party fails to establish the existence of a genuine issue of material fact, “the  
10 moving party is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24  
11 (1986).

## 12 **2. Analysis**

13 IMC argues that there are no material facts in dispute that would require a trial. (Mot. 5 (Dkt. No.  
14 21).) The Court agrees with this proposition. Sanai’s Amended Declaration in Contravention of  
15 Garnishee’s Answer fails to show that the answer is incorrect. (Dkt. No. 10.) It does not argue that Sanai  
16 owes no debt to IMC, nor that the Special Master’s description of the funds deposited into the  
17 Snohomish County Superior Court’s registry is incorrect in any respect. In response to the instant  
18 motion, Sanai raises procedural issues and seeks to invalidate the writ by attacking Maxeiner’s  
19 appointment as a Special Master in the first place. The Court will address each of Sanai’s arguments in  
20 turn, below.

### 21 **a. Support for the Motion**

22 First, Sanai argues that the motion “is completely bereft of any facts, or any argument supported  
23 by case law” and therefore, the motion must be denied. The Court is not persuaded by this argument. The  
24 motion is supported by the record, which shows that Sanai is indebted to IMC for the amount specified in  
25 the writ (Mot. 2 (Dkt. No. 18); C02-2165-TSZ, Dkt. No. 741), and that at the time the writ was served



1 upon the Garnishee, the Garnishee was in control of funds belonging to Sanai that were sufficient to  
2 cover such debt (Garnishee’s Answer (Dkt. No. 4).) The motion is replete with citations to the record  
3 and relevant authority. The Court will not deny the motion on grounds that the motion somehow fails for  
4 lack of facts or supported argument.

5 **b. Allegations of Corruption**

6 Sanai next argues that Maxeiner was “illegally and corruptly appointed to the position of ‘special  
7 master’ . . . by the Snohomish County Superior Court.” (Resp. 5 (Dkt. No. 21 at 6).) Specifically, Sanai  
8 argues that Maxeiner “is under the control of [Sanai’s ex-husband] Sassan Sanai, and does his bidding.”  
9 (*Id.*) As a result, Sanai argues, Maxeiner never had authority to hold the funds in the first place, and this  
10 Court should not “validate that corrupt conduct.” (*Id.* at 6.)

11 The Court is not persuaded by this argument. There is no evidence in the record to support  
12 Sanai’s allegations of corruption. In any event, Maxeiner was not acting pursuant to Sassan Sanai’s  
13 orders when he deposited the funds into the court’s registry and answered the writs; he was following the  
14 Snohomish County Superior Court’s order. The Court finds no basis for invalidating the writ of  
15 garnishment in this case based on Maxeiner’s role as Special Master.

16 **c. This Court’s Jurisdiction**

17 Finally, Sanai argues that this Court “lacks jurisdiction to direct anyone to do anything in respect  
18 of the funds held by the Snohomish County Clerk” because Maxeiner transferred the funds to the Clerk,  
19 and the Clerk is not a party to the writs of garnishment. (*Id.* at 6.) The Court finds Sanai’s argument  
20 without merit.

21 “Garnishment reaches personal property or effects of the defendant in possession or control of the  
22 garnishee at the time when the writ is served.” ROMBAUER, *supra*, § 8.10. At the time the writ in this case  
23 was served on Maxeiner, he was in possession of Sanai’s divorce proceeds. After the writs issued, the  
24 Snohomish County Superior Court directed him to deposit the funds into the court’s registry to await  
25 orders from this Court authorizing the Clerk to disburse the funds. That court expressly recognized that it

1 was still proper for any order issuing from this Court with respect to the disbursement of the funds to be  
2 directed at Maxeiner. The Court finds nothing in Sanai's briefing that would defeat this Court's  
3 jurisdiction to issue such an order.

4 Accordingly, the Court finds that there are no disputed issues of material fact requiring a trial in  
5 the instant case. It is undisputed that Sanai is indebted to IMC in the amount \$67,741.42, and that when  
6 the writ of garnishment issued, the Garnishee was in control of a sufficient amount of Sanai's funds to  
7 cover the amount sought in the writ, and that those funds are presently deposited in the Snohomish  
8 County Superior Court's registry awaiting an order from this Court with respect to disbursement to IMC.  
9 The Court GRANTS IMC's motion for summary judgment on the issue of whether IMC is entitled to  
10 such an order.

### 11 **III. CONCLUSION**

12 For the foregoing reasons, the Court hereby DENIES Viveca Sanai's Motion to Dismiss (Dkt.  
13 No. 11) and GRANTS IMC's Motion for Summary Judgment on Writ of Garnishment (Dkt. No. 18).  
14 Accordingly, the Court Orders that:

- 15 (1) IMC is awarded judgment against the garnishee Philip Maxeiner, Special  
16 Master, in the amount of \$67,741.42; and
- 17 (2) The Snohomish County Superior Court clerk in Cause No. 01-3-00054-5  
18 shall disburse to the judgment creditor Internal Medicine and Cardiology,  
19 Inc., the sum of \$67,741.42 upon receipt of a certified copy of this Order  
20 and the Judgment entered in this case.

21 The Clerk of the United States District Court is DIRECTED to close this case.

22 SO ORDERED this 29th day of August, 2008.

23   
24 John C. Coughenour  
25 UNITED STATES DISTRICT JUDGE